



NO. 91-197

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1991

STEVE W. PUCKETT, ET AL.,

Petitioners,

v.

WALTER LEE JOHNSON,

Respondent.

BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Julie Ann Epps

COUNSEL OF RECORD FOR RESPONDENT,  
WALTER LEE JOHNSON

Route 2; Box 226  
Rienzi, Mississippi 38865

(601) 462-5240

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STATEMENT OF THE CASE

Walter Lee Johnson is a black male who was convicted in 1980 in the Circuit Court of Panola County, Mississippi of murder. From 1959 until Johnson's indictment in 1979, no black had ever served as foreman of the grand jury although 42 white foreman had been appointed by the circuit judges of the county. Panola County is 43% black. (SCR/147-64).<sup>1</sup> The record demonstrated a long history of racial discrimination in Panola County showing that it is unlikely that a black had ever served as a grand jury foreman. (SCR/151). See, United

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1. Respondent will refer to the State Court Record as SCR followed by the page number. The record in the Court of Appeals will be referred to as R. followed by the volume and page number.

States v. Duke, 332 F.2d 759 (5th Cir. 1964).<sup>1</sup>

Johnson appealed his conviction to the Mississippi Supreme Court which affirmed Johnson's conviction despite his allegation that discrimination in the grand jury foreman violated his right to equal protection of the laws. Johnson v. State, 404 So.2d 553 (Miss. 1981).<sup>2</sup>

Johnson subsequently filed a petition for writ of habeas corpus in the Northern District of Mississippi alleging that "Discrimination in selection of the Grand Jury Foreman existed at the time of Petitioner's Indictment." (R. I/21).

The Magistrate held that Johnson's petition should be granted because the selection process for grand jury foremen in Panola County violated the equal protection clause of the Fourteenth Amendment. (Report, R. I/48-77).

Subsequently, the district court overruled the Magistrate's recommendation finding that no constitutional infirmity existed in the grand jury selection process. In doing  
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1. That case found that in 1961, only two black people had ever been registered to vote in Panola Count, one in 1892, the other in 1952. Since the jury list is drawn from the list of registered voters, at best only two blacks would ever have been eligible for grand jury service prior to 1961.

2. The Mississippi Supreme Court held that Johnson's claim failed because he had not proven discrimination over a "significant period of time," a claim subsequently rejected by the Court of Appeals for the Fifth Circuit and not pursued by Respondent in this court.

so, the district court relied on the due process rationale of Hobby v. United States, 468 U.S. 339, 104 S.Ct. 3093, 83 L.Ed.2d 260 (1984). (R. I/99-109, 110-111).

Johnson appealed to the United States Court of Appeals for the Fifth Circuit which overruled the district court holding that the due process rationale of Hobby was inappropriate to the disposition of Johnson's equal protection which the Court of Appeals found to be controlled by this Court's decision in Rose v. Mitchell, 443 U.S. 545, 99 S.Ct. 2993, 61 L.Ed.2d 739 (1979). Johnson v. Puckett, 929 F.2d 1067 (5th Cir. 1991).

Petitioner, the State of Mississippi, is now before this Court asking that certiorari be granted to review that holding claiming that it conflicts with Hobby and with the decision of the Sixth Circuit in Ford v. Seabold, 841 F.2d 677 (6th Cir. 1988).

#### **SUMMARY OF THE ARGUMENT**

Petitioner is incorrect in asserting that the decision of the Fifth Circuit conflicts with Hobby, supra and with the decision of the Sixth Circuit in Ford v. Seabold, supra.

Hobby involves a claim that discrimination in the appointment of the federal grand jury foreman violated a white defendant's right to due process. Hobby held that assuming that such discrimination could be shown to exist,

reversal of a conviction was not warranted because such discrimination "does not in any sense threaten the interests of the defendant protected by the Due Process Clause [emphasis added]." 468 U.S. at 343, 104 S.Ct. at 3096.

On the contrary, in Rose v. Mitchell, this Court assumed, without deciding, that discrimination in the appointment of the foreman of a grand jury under the equal protection clause would require that the conviction be set aside.<sup>1</sup> Reversal is required under the equal protection clause because of the nature of the injury. In an equal protection case, the defendant has suffered the injuries of stigmatization and prejudice associated with racial discrimination. Rose v. Mitchell, 443 U.S. at 556, 99 S.Ct. at 3000.

Moreover, the injury to equal protection caused by such discrimination "'is not limited to the defendant--there is injury to the jury system, to the law as an institution, to the community at large, and to the processes of our courts.' citation omitted]." Id.

These injuries exist regardless of whether the grand

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1. Since the decision in that case, the Fifth Circuit sitting en banc has adopted the view that discrimination in the selection of the grand jury foreman which violated the equal protection clause would require reversal of the conviction. Guice v. Fortenberry, 661 F.2d 496, 499 (5th Cir. 1980) (en banc), appeal after remand, 722 F.2d 276 (5th Cir. 1984). See also, Williams v. Mississippi, 608 F.2d 1021, 1022 (5th Cir. 1979).



jury itself is properly constituted or whether the foreman's duties are merely ministerial as in Hobby.

The decision of the Fifth Circuit, furthermore, does not conflict with that of the Sixth Circuit in Ford v. Seabold, supra because that case involves a claim of discrimination in the appointment of jury commissioners rather than one involving the grand jury foreman. There is no conflict between Ford and the instant case because the Fifth Circuit here held that discrimination in the appointment of the foreman implicates the equal protection clause; whereas, the Sixth Circuit held in Ford that discrimination in the appointment of the jury commissioners does not. Ford is, therefore, readily distinguishable on the facts.

#### REASONS FOR DENYING CERTIORARI

I. THE DECISION OF THE FIFTH CIRCUIT IN THIS CASE DOES NOT CONFLICT WITH PRECEDENT OF THIS COURT SET IN HOBBY V. UNITED STATES, SUPRA.

The uncontroverted facts establish Johnson's claim of racial discrimination in the appointment of grand jury foremen in Panola County, Mississippi. Moreover, Johnson's prima facie case of racial discrimination was un rebutted. The Fifth Circuit so found, and the State of Mississippi does not now dispute those findings, suggesting rather that the discrimination be condoned because the due process rationale of Hobby v. United States, applies to Petitioner's equal protection claim.

Under the Hobby rationale, reversal of a conviction is not warranted in a case involving a white defendant claiming a violation of his due process right to fundamental fairness where the grand jury itself was properly constituted and the duties of the grand jury foreman were merely "ministerial." Hobby, however, is not applicable to Johnson's case because Johnson is a black defendant claiming discrimination under the equal protection clause.

In Hobby, this Court assumed discrimination in the selection of the foremen of the federal grand juries in question, but held that such discrimination--"as distinguished from discrimination in the selection of the grand jury does not in any sense threaten the interests of the defendant protected by the Due Process Clause [emphasis added]." 468 U.S. at 343, 104 S.Ct. at 3096.<sup>1</sup>

After detailing the duties of the federal grand jury foreman, this Court concluded that the due process clause was not implicated because the federal foreman's duties were "essentially clerical in nature" and because the "foreman has no authority apart from that of the grand jury as a whole to -----

1. The Court identified as due process concerns the defendant's right to be tried by a competent and impartial tribunal, the creation of an appearance of institutional bias and an important societal interest of diversity of representation on grand and petit juries. 468 U.S. supra at 343, 104 S.Ct. supra at 3095-96.

act in a manner that determines or influences whether an individual is to be prosecuted." 468 U.S. at 345, 104 S.Ct. at 3096.

With regard to the defendant's due process right to fundamental fairness, the Court went on to say that

Given the ministerial nature of the position, discrimination in the selection of one person from among the members of a properly constituted grand jury can have little, if indeed any, appreciable effect upon the defendant's due process right to fundamental fairness. Simply stated, the role of the foreman of a federal grand jury is not so significant to the administration of justice that discrimination in the appointment of that office impugns the fundamental fairness of the process itself so as to undermine the integrity of the indictment [emphasis added].

468 U.S. at 345, 104 S.Ct. at 3096-97.

As for the defendant's due process interest in assuring that the grand jury be composed of a representative cross-section of the community, the Court held that this right does not arise because "[n]o one person can possibly represent all the 'qualities of human natures and varieties of human experience,' . . . that may be present in a given community." The Court reasoned that "[s]o long as the composition of the grand jury as a whole [is composed of a representative cross-section], discrimination in the appointment of one member of the grand jury to serve as its foreman does not conflict with those interests [emphasis added]." 468 U.S. at 346, 104 S.Ct. at 3097.

The Court then distinguished Hobby's due process claim from the equal protection claim presented in Rose. The Court said that "the nature of [Hobby's] alleged injury and the constitutional basis of his claim distinguish[ed] it from those of the defendants in Rose." 468 U.S. at 347, 104 S.Ct. at 3098. The Court clarified the nature of the injury under an equal protection analysis by stating that

[a]s members of the class allegedly excluded from service as grand jury foremen, the Rose defendants had suffered the injuries of stigmatization and prejudice associated with racial discrimination. The Equal Protection Clause has long been held to provide a mechanism for the vindication of such claims in the context of challenges to grand and petit juries [citations omitted].

468 U.S. at 347, 104 S.Ct. at 3097.

The Court also distinguished Rose from Hobby on the basis of the method used in Tennessee to select a grand jury and its foreman. In Tennessee 12 members of the grand jury were selected by the jury commissioners from a list of qualified potential jurors. The foreman was then appointed by a judge from "the general population at large" and then served as the thirteenth member of the grand jury. 468 U.S. at 347, 104 S.Ct. at 3098. The Court explained that discrimination in the selection of the foreman could then mean that 1 of the 13 members was selected in an impermissible fashion.

In contrast, the foreman in the federal system is chosen from among the members of the grand jury after they

have been impaneled. Assuming that the grand jury itself is properly constituted, according to Hobby, there would then be no risk that the overall composition of the federal array would be distorted by the selection. 468 U.S. at 348, 104 S.Ct. at 3098.<sup>1</sup>

The Hobby Court also distinguished the Tennessee system from the federal system on the basis of the role of the grand jury foreman. In Tennessee, the foreman assists the district attorney in investigating crime, may order the issuance of subpoenas, administer oaths to grand jury witnesses, must endorse every bill returned by the grand jury and must present any indictment to the court in the presence of the grand jury. Furthermore, the absence of the foreman's signature makes an indictment in Tennessee fatally defective. Id.

By contrast, the federal foreman has no special powers and duties, his duties are essentially clerical in nature, and his signature is not necessary to the validity of an

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1. Unlike the due process challenge in Hobby or a Sixth Amendment right to a representative cross-section challenge, an equal protection objection to the foreman selection process is not so much addressed to the question of the overall composition of the grand jury as it is to the injury to the class to which defendant belongs and the injury to society and to the criminal justice system which results from racial discrimination. Consequently, while due process concerns are not implicated in a grand jury foreman challenge, equal protection concerns are.

indictment.<sup>1</sup> Id.

The Court then said that

[g]iven the nature of the constitutional injury alleged in Rose, the peculiar manner in which the Tennessee grand jury selection operated, and the authority granted to the one who served as foreman, the Court assumed in Rose that discrimination with regard to the foreman's selection would require the setting aside of a subsequent conviction, . . . . No such assumption is appropriate here, however, in the very different context of a due process challenge by a white male to the selection of foremen of federal grand juries.

468 U.S. at 349, 104 S.Ct. at 3098.

Respondent, the State of Mississippi, reads the foregoing to mean that unless the grand jury itself was selected in a discriminatory fashion and the foreman had the power to influence the outcome of the indictment process, then no equal protection violation occurred warranting reversal. According to the State, the duties of the Mississippi foreman are no different than those of other grand jurors and the

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1. Rule 6(c) of the Federal Rules of Criminal Procedure governs the appointment and duties of the federal grand jury foreman:

The court shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designed by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court. The record shall not be made public except on order of the court. During the absence of the foreman, the deputy foreman shall act as foreman.



foreman was selected from a venire composed of a representative cross-section of the population.

The major vice in the State's analysis is that it ignores the difference between the "nature of the constitutional injury" to Johnson's equal protection rights and Hobby's due process interests.

In Hobby, this court found that a defendant does have a due process interest in having a jury which is representative of the community. Despite this interest, however, the Court held that "[s]o long as the composition of the federal grand jury as a whole serves the representational due process values [citation omitted], discrimination in the appointment of one member of the grand jury to serve as its foreman does not conflict with those interests." Hobby, 468 U.S. at 346, 104 S.Ct. at 3097.

Because, however, Johnson is alleging a deprivation of his right to equal protection--not to be discriminated against because of his race--the injury which must be redressed is to that right rather than to any due process right to a representative jury. The State would have this Court ignore the nature of Johnson's claim while placing undue emphasis on the method used to select the grand jury.

The State likewise errs in its analysis by placing undue importance on the duties of the grand jury foreman. In Hobby, this Court held that given the ministerial nature of

the position, the foreman could have little "effect upon the defendant's due process right to fundamental fairness." Once again by ignoring the basis of Johnson's constitutional injury and claim, the State has overlooked the fact that insofar as the foreman's actual duties are concerned, it is not so much his ability to influence the outcome which is at issue in an equal protection claim as it is the defendant's right and the right of his class to enjoy the full benefits of citizenship.

Moreover, assuming for the sake of argument that ability to influence the outcome of the grand jury's deliberations is relevant to an equal protection claim, the State is incorrect in asserting that the duties of Mississippi foremen are no different from those of other grand jurors and hence more closely akin to those of the federal foreman than the Tennessee foreman.

The State overlooks some significant differences between the federal grand jury foreman and the Mississippi foreman. In Mississippi as in Tennessee, but unlike the federal system, the indictment and grand jury report must be presented to the court by the foreman or the foreman's designee. In addition, Section 99-7-9, Mississippi Code of 1972 (Annotated), requires that the indictment and report have the "foreman's name endorsed thereon, accompanied by his



affidavit that all indictments were concurred in by twelve (12) or more members of the jury and that at least fifteen (15) were present during all deliberations . . . ."<sup>1</sup>

In Mississippi, as in Tennessee, the absence of the foreman's signature renders it subject to demurrer. Atkinson v. State, 392 So.2d 205 (Miss. 1980) [Foreman's signature on the indictment is sufficient to withstand demurrer]; Jones v. State, 356 So.2d 1182 (Miss. 1978) ["This Court has pointed out on previous occasions that if the statutory requirements of section 99-7-9 (and its predecessors) are not met, it is proper to demur to such an indictment and the demurrer should be sustained"].

Thus, the Mississippi grand jury foreman has veto power over an indictment, an "authority apart from that of the grand jury as a whole to act in a manner that determines or influences whether an individual is to be prosecuted." 468 U.S. at 345, 104 S.Ct. at 3096.<sup>2</sup>

Furthermore, it is somewhat disingenuous to argue that the foreman does not exercise an extra degree of influence on

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1. Rule 2.05 of the Mississippi Uniform Criminal Rules also provides that "[a]n indictment shall also include the . . . signature of the foreman of the grand jury issuing it."

2. In addition to endorsing and presenting the indictments, the foreman has additional duties which consist of administering oaths to witnesses and keeping records of the witnesses sworn. Section 13-5-63, Mississippi Code of 1972 (Annotated).

the other jurors. For example, in discussing the effect of the judge's appointment of the petit jury foreman, in United States v. Burton, 737 F.2d 439, 444 (5th Cir. 1984), this Court said, the

selection by the judge of a foreperson arguably clothes the foreperson with some particular authority. We can only guess how that circumstance may affect the dynamics of deliberation, but we are comfortable in concluding that there are effects.

See, also, United States v. Cross, 708 F.2d 631 (11th Cir. 1983), vacated in light of Hobby, 104 S.Ct. 3580, on remand 742 F.2d 1279 (11th Cir. 1984) [The selection of the foreman by the judge could endow the foreperson with enhanced persuasive influence over his peers].<sup>1</sup>

Regardless of the method of selection and the duties of the foreman, the basis of Johnson's constitutional claim and the nature of his injury are the significant factors determining whether he is entitled to have his conviction set aside. The Court in Hobby emphasized that the question it was deciding was "the narrow one of the appropriate remedy for such a violation [Fifth Amendment due process rights]." 468 U.S. at 342, 104 S.Ct. 3095. The Court's conclusion that no remedy was appropriate in Hobby is based on the Court's

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1. Moreover, the circuit judges in Panola County felt the need to consult with other officials before appointing a foreman indicates that the foreman occupies a position of importance on the grand jury.

conclusion that "[d]iscrimination in the selection of grand jury foremen--as distinguished from discrimination in the selection of the grand jury itself--does not in any sense threaten the interests of the defendant protected by the Due Process Clause." 468 U.S. at 343, 104 S.Ct. 3096.

Implicit within the Respondent's argument is a belief that the nature of Johnson's constitutional claim is irrelevant. Such a conclusion is not supported by Hobby. Johnson, a black male, has suffered a constitutional injury to his right to equal protection under the law. Members of his race have been systematically excluded from service as foremen on grand juries for at least twenty years in Panola County. They have been denied their right to participate equally in the responsibilities of citizenship.

Like the Rose defendants, Johnson has "suffered the injuries of stigmatization and prejudice associated with racial discrimination." Rose v. Mitchell, 443 U.S. at 347, 99 S.Ct. at 3097. Moreover, he has suffered this stigmatization regardless of whether the total venire was properly selected. While he has no right to have a black as foreman, he does have the right to a foreman who has been selected by criteria which are racially neutral.

Furthermore, Johnson has suffered another injury to his right to equal protection. The Supreme Court has said that "discrimination on account of race in the administration of

justice strikes at the core concerns of the Fourteenth Amendment and at the fundamental values of our society and our system of justice. [Furthermore, such] discrimination . . . is 'at war with our basic concepts of a democratic society and a representative government, [citation omitted]" Rose v. Mitchell, 443 U.S. at 556, 99 S.Ct. at 3000.

Consequently, because the nature of the injury to Johnson's equal protection rights is more substantial than the injuries to the defendant's due process interests in Hobby, this Court should reject the state's argument that Hobby controls this case and deny certiorari.

The deliberate exclusion of blacks "is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others."

Vasquez v. Hillery, 474 U.S. 254, 260, 106 S.Ct. 617, 621, 88 L.Ed.2d 598 (1986), quoting Strauder v. West Virginia, 10 Otto 303, 308, 100 U.S. 303, 308, 25 L.Ed. 664 (1880).

The racially discriminatory practices which occurred in this case both "stigmatized" Johnson and all black people in Panola County and served as "an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." Id. Such practices cannot be countenanced under the equal protection clause even though the grand jury itself may have been selected in a racially

non-discriminatory manner.

The decision of the Court of Appeals does not, therefore, conflict with this Court's decision in Hobby, and certiorari is not appropriate in this case.

**II. THE RULING BELOW DOES NOT CREATE A CONFLICT AMONG THE CIRCUITS REGARDING THE CRITERIA TO BE UTILIZED FOR CONSIDERATION OF A CLAIM INVOLVING SELECTION OF A GRAND JURY FOREMAN.**

The State also claims that this Court should grant certiorari because the Fifth Circuit's decision in this case conflicts with the decision of the Sixth Circuit in Ford v. Seabold, supra. That case, however, is readily distinguishable from Johnson's on its facts.<sup>1</sup>

Ford was convicted of capital murder. Among other

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1. The State also seems to be saying that the decision in Johnson conflicts with the decision in Johnson v. Thigpen, 623 F.Supp. 1121 (S.D.Miss. 1985), aff'd 896 F.2d 1243 (5th Cir. 1986). That case, however, held that where the grand jury foreman was selected by the grand jury members themselves rather than by the judge as in this case, there was no showing of discrimination because the process was random and neutral. The case, therefore, is inapposite. See, Respondent's Brief, pp. 26, 38.

The State also seems to be arguing, or suggesting at any rate, that the decision in this case conflicts with Matthews v. Barnett, 918 F.2d 955 (4th Cir. 1990), an unpublished opinion of the Fourth Circuit. This case holds that the defendant could not raise a grand jury foreman claim because Rose was not retroactive. In passing, the Court remarked that "The Court has since distinguished Rose, holding that discrimination in the selection of a foreman from among the grand jury members, to perform largely ministerial functions, does not invalidate a conviction under the due process clause. Hobby v. United States, 468 U.S. 339 (1984) [emphasis added]" Matthews v. Barnett, even in dictum, does not conflict with this case, therefore, because this case is brought under the equal protection clause. Id. at 27.



challenges to the Franklin County, Kentucky grand and petit jury systems, Ford claimed that his Fourteenth Amendment due process and equal protection rights were violated because the county had appointed no nonwhites to serve as jury commissioner. Ford relied on Carter v. Greene County, 396 U.S. 320, 90 S.Ct. 518, 24 L.Ed.2d 549 (1970) wherein this Court "assume[d] that the state may no more exclude negroes from service on the jury commission because of their race than from the juries themselves." 396 U.S. at 321, 90 S.Ct. at 519. Carter was a civil suit where black citizens of Greene County, Alabama sought an order vacating the appointments of the Greene County jury commissioners. In Carter, however, the plaintiffs were entitled to no relief because they failed to prove a prima facie showing of racial discrimination. The Sixth Circuit held that Ford, like the Carter plaintiffs, had failed to proffer any evidence of discrimination. Ford v. Seabold, 841 F.2d at 689.

The Court went on to in dictum to distinguish Carter<sup>1</sup> saying that even if Ford had shown discrimination in the appointment of blacks to the commission, "the Constitution does not compel reversal of Ford's conviction since Ford suffered no prejudice and any discrimination in the appoint-

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1. Because Carter was a civil case, the relief requested was injunctive.

ment of the commissioners would not undermine the integrity of the indictment and conviction." Id. Citing Hobby, The Court then said, "the impact of any perceived discrimination in selecting the commissioners would not, because of the technical nature of the commissioner's job responsibilities, cast doubt on the judicial process." Id. Lastly, the Court noted that "the jury commissioners do not participate as grand or petit jurors and thus have no direct influence over the outcome of any criminal cases [emphasis added]." Id. at 690.

The difference between Johnson's case and Ford's is readily apparent. Ford argued that his case should be reversed because of discrimination in the selection of the jury commissioners who "do not participate as grand or petit jurors and thus have no direct influence over the outcome of any criminal case." Id. at 690. The same cannot be said about the grand jury foremen.

Even under an equal protection analysis reversal of a conviction was not required in Ford because no doubt would be cast on the integrity of the judicial process because the commissioner's job responsibilities were technical and because he has no direct influence over the outcome of the criminal case. Id. at 689. This is clearly not the case with the grand jury foreman who, unlike the commissioners, does directly influence the outcome of an indictment.

The only possible way that discrimination in the ap-

pointment of the commissioners could influence the actual outcome of a case would be if the commissioner used the office to select jury venires where certain races or classes of people were underrepresented. Where, however, the commissioner has failed to do this and the venire is lawfully constituted, as in Ford, the commissioner has had no impact whatsoever impact on the outcome of the case. The same is not true of the grand jury foreman who does vote in the case.

Moreover, his connection with the system is too remote to warrant a reversal of a conviction because of the possibility that discrimination in his appointment will undermine public confidence in the judicial system.<sup>1</sup> Again, unlike the foreman, his lack of power to directly influence the outcome simply does not warrant a public policy of reversal for discrimination in his appointment.

The decision of the Fifth Circuit in this case, therefore, does not conflict with the Sixth Circuit's in Ford because that case, even in dictum, holds only that discrimination in the appointment of jury commissioners does not implicate the equal protection clause to a degree warranting reversal of conviction. It does not follow as the State reasons that the Sixth Circuit in so opining is holding that  
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1. Injunctive or other similar relief in a civil forum would under Carter, supra, however, be appropriate.



discrimination in the appointment of the foreman does not warrant reversal.<sup>1</sup> There is, therefore, no conflict between Ford and this case, and this Court should deny certiorari.

**CONCLUSION**

Because there is no conflict between the decision in this case and Hobby or Ford, this Court should deny certiorari. Rule 10 of the Rules of this Court provides that certiorari will be granted "only when there are special and important reasons therefor." The State proffers only insubstantial reasons why this Court should exercise this power to excuse Panola County from the consequences of years of racial discrimination in its criminal justice system. Such an exercise of discretion would be unworthy of this Court.

Respectfully submitted,  
WALTER LEE JOHNSON

BY: Julie Ann Epps  
COUNSEL FOR RESPONDENT

Julie Ann Epps  
Counsel for Respondent, Walter Lee Johnson

Route 2; Box 226  
Rienzi, Mississippi  
(601) 462-5240

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1. Indeed, had the Sixth Circuit so held that decision would conflict with Rose which assumes that discrimination in the appointment of the foreman would require reversal.